IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Bail Appl..No. 6238 of 2007()

CRIME NO.507/07 OF GURUVAYOOR POLICE STATION

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: PETITIONERS/ACCUSED 1 TO 3

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1. MUJEEB,
   S/O.MOIDUNNY, THERUVATHUVEETTIL HOUSE,
   P.O.BRAHMAKULAM, THEKKANIYATH COLONY,
   CHAVAKKADU TALUK.

2. GIREESH,
   S/O.KRISHNANKUTTY, ANGALARUVEETTIL,
   P.O.BRAHMAKULAM, THEKKANIYATH COLONY,
   CHAVAKKADU TALUK.

3. USUF,
   S/O.ALAVI, PANICKAVEETTIL HOUSE,
   BRAHMAKULAM, CHAVAKKADU TALUK.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA,
REPRESENTING SUB INSPECTOR OF POLICE,
GURUVAYOOR, REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6238 of 2007

Dated this the 22nd day of October, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1 to 3. They are allegedly persons involved in the conduct of a kuri by a company by name H.M.C Kuri Company, Brahmakulam. The gravamen of the allegation is that though the defacto complainant has paid amounts promptly as instalments in the chitty of which he was a subscriber and run by the petitioners, amounts have not been paid to the defacto complainant even after maturity of the chit. It is alleged that the petitioners are guilty of offences punishable under Section 420 I.P.C A crime has been registered on the basis of a private complaint filed by the defacto complainant before the learned Magistrate and referred by the learned Magistrate to the police under Section 156(3) Cr.P.C.

2. The learned counsel for the petitioners submits that there is absolutely no elements of the offence of cheating involved in this case. It is true that the defacto complainant had joined the kuri and that he had made payments of his subscription/instalments. But the defacto complainant is not entitled to the said amount as another person, for whom the defacto complainant had offered himself as surety, has committed default and the amounts payable to the defacto

complainant are liable to be adjusted towards the outstanding defaulted payments of such other person. The petitioners have valid reasons for not making payments to the defacto complainant. Realising clearly that resort to the civil process will not succeed, an attempt is made by the defacto complainant to unjustifiably coerce the petitioners to make the payment, it is submitted.

3. Notice was given to the learned Public Prosecutor . The learned Public Prosecutor does not oppose the application. I am satisfied, in the facts and circumstances of this case, that subject to appropriate terms and conditions, which shall ensure the interests of a fair, efficient and expeditious investigation, anticipatory bail can be granted to the petitioners.

4. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioners shall appear before the learned Magistrate at 11 a.m on 29.10.07. They shall be enlarged on regular bail on their executing a bond for Rs.50,000/- (Rupees Fifty thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 4

p.m on 30.10.07 and 31.10.07 and thereafter between 10 a.m and 12 noon on all Mondays and Fridays for a period of 2 months. Subsequently the petitioners shall make themselves available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

iv) If the petitioners were arrested prior to their surrender on 29.10.07 as directed in clause (1) above, they shall be released from custody on their executing a bond for Rs.50,000/- (Rupees Fifty thousand only) each without any sureties undertaking to appear before the learned Magistrate on 29.10.07.

(R.BASANT, JUDGE)

rtr/-